IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6315 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KANAIYALAL BECHARBHAI DARJI

Appearance:

MR HARDIK C RAWAL for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 29/10/1999

ORAL JUDGEMENT

Mr. Raval, the learned advocate is appearing for the petitioner Corporation. Notice of rule has been served upon the respondent but nobody has appeared for the respondent.

The facts of the present petition, in short, are that the the respondent was employed as a conductor by the petitioner corporation. In the course of his duty as

a conductor on 1st May, 1984 in bus plying between Nyaya Mandir to Station, it was found that he had collected fare from six passengers but had not issued tickets when the checking party made a surprise checking. He issued four tickets to the passengers which were found unpunched and he had collected fare from five passengers and issued unpunched tickets. He had also issued tickets in favour of two passengers and way bill was not filled up by the respondent and, therefore, he was served with a chargesheet. Thereafter, regular inquiry was held and thereafter, the respondent was dismissed from service by an order dated 17th September, 1984. Said order of dismissal was challenged by the petitioner before the labour court, Vadodara, by filing reference No. 435 of 1986. The labour court, under its judgment and award dated 27th December, 1989, directed reinstatement of the respondent without back wages and further directed that his one annual increment should be stopped. Said award is challenged by the petitioner corporation before this court by filing this petition under Article 227 of the Constitution of India.

While admitting the present petition by issuing rule thereon, this court has not granted the interim relief against the reinstatement of the respondent workman.

Before the labour court, the respondent workman has not challenged the legality and validity of the departmental inquiry by filing purshis at Exh. 14 and has also submitted an application to the labour court vide Exh. 15 to the labour court for exercising the powers under section 11A of the Industrial Disputes Act, 1947 ("the ID Act" for short). The workman has stated in the said purshis that he was working as permanent employee of the Corporation for more than seven years and three years as Badli workman which comes to total period of ten years' service The respondent workman has further explained the circumstances that because of it being the city bus, there was some rush and short distance between two stand and looking to certain circumstances beyond his control, said incident has happened wherein there was no any dishonest intention on his part. In the said purshis, the respondent has also pointed out that he is unemployed and poor workman having no means of livelihood to maintain his family and in past, one similar incident had occurred and ultimately, he has prayed before the labour court to show some mercy. The labour court has considered the length of service of the workman and past record of the workman and also considered the fact that by purshis Exh. 15, the respondent workman has foregone

the claim of back wages and has also agreed to accept the punishment of stoppage of one annual increment with cumulative effect. The labour court has also considered the judgment of the apex court in the matter of Scooter India versus Lucknow Labour Court, reported in 1989 Lab. & IC Vol. 22, page 1043. After considering all these aspects as also the judgment of the Honourable the Supreme Court in case of Scooter India (supra), the labour court has ordered reinstatement of the respondent with continuity of service but without back wages and further imposed punishment of stoppage of one annual increment but without future effect.

Mr. Raval, the learned advocate appearing for the petitioner corporation has contended before this court that the punishment which has been ordered to be imposed upon the respondent workman is not proper and is not commensurate with the guilt established against the respondent workman. He has also submitted that the respondent workman has agreed for accepting the punishment of stoppage of increment for one year with cumulative effect and, therefore, the labour court ought to have given future effect to the punishment of stoppage of increment. Therefore, according to the submission of Mr. Raval, the labour court has committed an error in imposing the punishment. He has also submitted that the misconduct levelled against the workman is serious in nature and it was established that he had recovered fare from the passengners but had not issued tickets and in traffic cash, an amount of Rs.7.30 was found excess. Way bill was not properly filled up and some tickets were issued after seeing the checking party. According to his submission, these circumstances are enough to impose some heavy punishment. It is more so in view of the past record wherein in all 11 defaults were committed by the respondent workman.

I have considered the submissions of learned advocate Mr. Raval. Looking to the charge levelled against the respondent, he recovered fare from certain passengers and issued tickets after seeing the checking staff and excess was found in the traffic cash and way bill was not filled up properly which are serious misconducts which the labour court has not taken into consideration while passing the impugned award. Before the disciplinary authority in the departmental inquiry, misconduct alleged against the respondent has been established and the legality thereof has not been challenged by the respondent workman before the labour court in the reference. The labour court has also concluded that the charges levelled against the workman

were found to be proved and the labour court has considered ten years' service and short distance between the two stand and traffic load and also considered that there was no dishonest intention on the part of the respondent workman and, therefore, after considering the entire evidence on record the labour court has ordered for reinstatement as stated above.

Now, taking into consideration the fact that while admitting this petition, this court has not granted the intereim relief against reinstatement, the respondent workman must have been reinstated in service. After lapse of the period of about nine years, now, it is not desirable and in the fitness of the things to disturb the findings of the labour court as also the present position of the labour. Therefore, in so far as the reinstatement part of the impugned award is concerned, same does not require any interference by this court in view of passage of time. However, in so far as the penalty part of the impugned judgment and award is concerned, I am of the opinion that some more punishment is required to be imposed looking to the serious ness of the charge established against the respondent workman. The labour court has, under the impugned judgment and award, ordered stoppage of one annual increment without future effect. I am of the opinion that instead of that, if three annual increments of the respondent workman are ordered to be stopped with cumulative effect, with effect from 1st January, 1999, that would met the ends of justice and to that extent, the award of the labour court is required to be modified. Accordingly, I pass the following order.

The impugned judgment and award of the labour court is modified in so far as the penalty imposed upon the respondent is concerned. Instead of stoppage of one annual increment of the respondent without cumulative effect, the petitioner corporation is directed to stop three annual increments of the respondent workman with cumulative effect, with effect from 1st January, 1999. The effect of these directions would be that on and from 1st January, 1999, his three increments shall be stopped by the petitioner corporation with future effect and the same would not result into reduction of his present pay packet and as a consequence of such stoppage of increments as stated above, there shall be no recovery from the respondent workman but his three annual increments shall be stopped with future effect from 1st January, 1999. Rest of the award passed by the labour court, Baroda in Reference No. 435 of 1986 dated 27.12.1989 is confirmed. Rule is made absolute to the aforesaid extent with no order as to costs.

29.10.1999. (H.K.Rathod,J.)

Vyas